

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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| ITC MIDWEST LLC, Petitioner, vs. IOWA UTILITIES BOARD, Respondent. | CASE NO. CVCV063439 CVCV064019 RESPONDENT'S AMENDMENT TO PRE-ANSWER MOTION FOR REMAND OR DISMISSAL |
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COMES NOW Respondent Iowa Utilities Board (Board), by and through its undersigned counsel, and pursuant to Rule 1.303, Iowa R. Civ. P., moves for dismissal of the Petition for Judicial Review filed in Polk County District Court Case No. CVCV064019 and, in support thereof, respectfully states as follows:

1. This matter arises from Board Docket No. E-21340 in which ITC Midwest LLC (ITC Midwest) is seeking an extension of an electric transmission line franchise. That docket remains pending.

2. On April 7, 2022, ITC Midwest filed a Petition for Judicial Review that was designated Polk County Case No. CVCV063439. The action for which judicial review is sought is an “Order Requiring Amendment to Electric Franchise” issued March 11, 2022, which is an intermediate order relating to procedural steps to be required of ITC Midwest prior to the issuance of an extension of the franchise.

3. On June 3, 2022 the Board filed a Pre-answer Motion for Remand or Dismissal. Responsive pleadings were timely filed by the parties.

4. On July 15, 2022, ITC Midwest filed a Petition for Judicial Review that was designated Polk County Case No. CVCV064019 (Second Petition). The action for which judicial review is sought is an “Order Addressing Extension of Electric Transmission Line

Franchise, Motion for Stay and Amendment Requirement” (Subsequent Order).

5. On July 29, 2022, hearing on the Motion for Remand or Dismissal was held and the Court took up the issue of consolidation of the two pending petitions for judicial review.

6. On August 2, 2022, the Court issued an Order to Consolidate the two pending petitions for judicial review.

7. The Board’s Motion for Remand or Dismissal is currently submitted and pending determination by the Court.

AMENDMENT TO MOTION FOR REMAND OR DISMISSAL

8. The Board hereby adopts and incorporates by references the Respondent’s Pre-Answer Motion for Remand or Dismissal filed on June 3, 2022, to the extent applicable to the Second Petition.

9. As an independent basis for dismissal of the Second Petition, the Board asserts that ITC Midwest is not aggrieved or adversely affected by the Subsequent Order and therefore does not have standing to bring the Second Petition.

10. As set forth in Attachment D to the Second Petition, the Ordering Clauses of the Subsequent Order state in their entirety:

“IT IS THEREFORE ORDERED:

1. The motion for stay filed by ITC Midwest LLC on April 7, 2022, is granted. The stay is granted until the conclusion of the judicial review proceeding filed by ITC Midwest LLC regarding the Utilities Board’s March 11, 2022 order in Docket No. E-21340.

2. Utilities Board Safety and Engineering staff shall prepare and file the official notice within 10 days of the date of this order.”

11. To have standing to challenge an administrative action in court under the Iowa Administrative Procedures Act, the complaining party must have a specific, personal, and legal interest in the litigation, and the specific interest must be adversely affected by the agency action

in question. *Klien v. Iowa Public Information*, 968 N.W.2d 220, 235 (Iowa 2021).

12. As the Subsequent Order merely grants the requested stay to ITC Midwest and directs staff to proceed with the public notice necessary for ITC Midwest to receive their requested transmission line franchise extension, the Subsequent Order does not adversely affect any legal interest of ITC Midwest.

13. Granting of dismissal of the Second Petition does not alter or diminish the issues to be determined in the prior existing judicial review in Polk County Case No. CVCV063439.

RELIEF REQUESTED

WHEREFORE, Respondent Iowa Utilities Board respectfully requests this Court consider this Amendment to Pre-Answer Motion for Remand or Dismissal and grant dismissal of the Second Petition designated as Polk County Case No. CVCV064019, and issue such further orders as the Court deems appropriate.

Respectfully submitted,

/s/ Jon Tack
Jon Tack (AT0007738)
Iowa Utilities Board
1375 E. Court Avenue
Des Moines, IA 50319
Telephone: (515) 725-7333
Email: jon.tack@iub.iowa.gov

**ATTORNEY FOR RESPONDENT IOWA
UTILITIES BOARD**

ALL PARTIES SERVED ELECTRONICALLY